



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

July 20, 2015

PR 15-41

Mr. Richard Finnegan

Re: Finnegan v. Town of Scituate

Dear Mr. Finnegan:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Town of Scituate ("Town") is complete. In your complaint, you allege that the Town violated the APRA when it failed to timely respond to your APRA request dated January 21, 2015. Specifically, you requested documents pertaining to an "agreement between [State] of [Rhode Island] and the Town of Scituate concerning Spring Brooke [Road]." As related by your complaint, on February 9, 2015, you "went to the Scituate Town Clerk's office to inquire about the status of [your] request." While at the Town Clerk's office, you were provided with a document dated January 23, 2015 "addressed to the Scituate Town Treasurer from the Public Works Director * * * [indicating] that there was no such agreement." Your complaint relates that you believe this notification on February 9, 2015 was untimely.

In response to your complaint, we received a substantive response from the Town's legal counsel, David M. D'Agostino, Esquire. Attorney D'Agostino states, in pertinent part, that it is clear that: (1) the document you requested does not exist; (2) the Town researched and prepared its response in a timely manner; and (3) despite the fact that the January 23, 2015 letter was prepared and on file with the Town Clerk's office, the Town Clerk's office did not mail the January 23, 2015 letter to you within ten (10) business days of your request. Based on the evidence, Mr. D'Agostino suggests that the January 23, 2015 letter was misfiled (in the APRA file it had created for this matter), and was mistakenly not mailed to you.

In examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General

Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Town violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. If a public body needs additional time to respond to an APRA request, the APRA provides that a public body, “for good cause,” may extend the response time an additional twenty (20) business days to a total of thirty (30) business days. R.I. Gen. Laws § 38-2-7(b).

Here, the Town acknowledges that it failed to forward its January 23, 2015 response to you within ten (10) business days of your request. As such, we find that it violated the APRA.

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). A court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter***.” See R.I. Gen. Laws § 38-2-9(d).

We believe neither remedy is appropriate. Specifically, the evidence demonstrates that the document you requested is not maintained, and accordingly, injunctive relief is not appropriate. R.I. Gen. Laws § 38-2-3(h). Further, although we are aware of other instances where the Town failed to respond to an APRA request in a timely manner, see e.g., Costa v. Town of Scituate, PR 12-18; Knowlton v. Town of Scituate, PR 08-28, based upon the specific facts of this case, we simply conclude that the evidence does not establish a willful and knowing, or reckless, violation. This finding does serve as notice to the Town that the actions discussed herein violated the APRA and may serve as evidence of a willful and knowing, or reckless, violation in a similar future situation. We would respectfully suggest that Mr. D’Agostino and the Town consider ways to ensure that APRA replies that are properly and timely prepared are also timely forwarded or otherwise made available to the requester.

While the Attorney General will not file suit in this matter, nothing within the APRA prohibits an individual from obtaining legal counsel for the purpose of instituting

injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing your file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Field". The signature is fluid and cursive, with the first name "Michael" being more prominent and the last name "Field" following in a similar style.

Michael W. Field
Assistant Attorney General

Cc: David M. D'Agostino, Esquire